

Notices

Regulatory Notices

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Trade Reporting

SEC Approves Amendments Requiring Related Market Center Indicator in Non-Tape Reports Submitted to FINRA

Effective Date: March 1, 2010

Executive Summary

Effective Monday, March 1, 2010, firms submitting a non-tape report (either a non-tape, non-clearing report or clearing-only report) to the Alternative Display Facility (ADF), a Trade Reporting Facility (TRF) or the OTC Reporting Facility (ORF) (referred to herein as the “FINRA Facilities”) associated with a previously executed trade that was not reported to that same FINRA Facility must identify the facility or market where the associated trade was reported for dissemination purposes (the “Related Market Center”).

The text of the amendments can be found at: www.finra.org/rulefilings/2007-012.

Questions regarding this *Notice* may be directed to:

- The Legal Section, Market Regulation, at (240) 386-5126; or
- The Office of General Counsel at (202) 728-8071.

September 2009

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Executive Representatives
- Legal
- Operations
- Senior Management
- Systems
- Trading
- Training

Key Topic(s)

- Agency Trades
- Alternative Display Facility
- NMS Stocks
- Non-Tape Reports
- OTC Equity Securities
- OTC Reporting Facility
- Related Market Center
- Riskless Principal Trades
- Trade Reporting
- Trade Reporting Facilities

Referenced Rules & Notices

- FINRA Rule 7130
- FINRA Rule 7230A
- FINRA Rule 7230B
- FINRA Rule 7330
- Regulatory Notice 07-38

Background and Discussion

New Related Market Center Reporting Requirement

Certain over-the-counter (OTC) equity transactions (including OTC transactions in NMS stocks and OTC equity securities, such as OTC Bulletin Board and Pink Sheets securities) are reported to FINRA in related tape and non-tape reports.¹ For example, a riskless principal transaction² can be submitted to FINRA as a single tape report properly marked as riskless principal, or as two separate reports: (1) a tape report to reflect the initial leg of the transaction and (2) a non-tape report to reflect the offsetting, “riskless” leg of the transaction. Agency transactions in which a firm acts as agent on behalf of another member firm also are reported in related tape and non-tape reports. Under FINRA rules, firms are not required to submit related tape and non-tape reports to the same FINRA Facility for such riskless principal and agency transactions.³

Because a non-tape report provides no specific information linking it to a related tape report, it is difficult for FINRA to determine with certainty where the associated trade was reported, especially if that trade was reported through an exchange or to another FINRA Facility. In this regard, on May 12, 2009, the SEC approved amendments⁴ to FINRA trade reporting rules to require that firms identify the Related Market Center in any non-tape report (either a non-tape, non-clearing report or clearing-only report) submitted to a FINRA Facility associated with a previously executed trade that was not reported to that same FINRA Facility.⁵ In addition, firms are required to retain and produce to FINRA, upon request, documentation relating to the associated trade (*e.g.*, a confirmation from the exchange identifying the “street side” of a riskless principal transaction).

For example, if the initial leg of a riskless principal (or agency) transaction is executed on and reported through Exchange A and a firm submits a non-tape report for the offsetting leg of the transaction to a FINRA Facility, the non-tape report must include the unique indicator to identify Exchange A as the Related Market Center. By way of further example, if the initial leg is executed OTC and reported to TRF A and a firm submits a non-tape report for the offsetting leg to another FINRA Facility, the non-tape report must include the unique indicator to identify TRF A as the Related Market Center. Finally, if, for example, the initial leg is executed on and reported through a foreign exchange and a firm submits a non-tape report for the offsetting leg to a FINRA Facility, the non-tape report must include the unique indicator to identify “foreign exchange” as the Related Market Center.

When a firm submits a non-tape report to FINRA, the firm should have an affirmative basis to believe the underlying transaction has been properly reported to the tape, and FINRA expects firms to provide as much information pertaining to the Related Market Center as is available at the time the non-tape report is submitted. FINRA notes that the submission of non-tape reports is not subject to the 90-second reporting requirement under FINRA trade reporting rules. Thus, firms have until the end of the day on trade date to submit non-tape reports with the required Related Market Center information, unless a shorter reporting time is required under other FINRA rules.⁶

Populating the Related Market Center Field in Specific Reporting Scenarios

Provided below is guidance to assist firms in populating the Related Market Center field in specific reporting scenarios. For ease of reference, this guidance also is summarized in the chart at the end of this *Notice*. Firms must consult the applicable technical specifications for the FINRA Facility to which they are reporting for information on the specific data entries for a particular Related Market Center.⁷

FINRA expects that with this guidance, firms will be able to populate the Related Market Center field in all instances (*i.e.*, using the specific code identifying the exchange or FINRA Facility where the associated trade was executed and/or reported for tape purposes, a “multiple venues” code or an “unknown venue” code). If a firm leaves the Related Market Center field blank, it is making an affirmative representation that the non-tape report and the associated tape report were submitted to the same FINRA Facility. In fact, that is the only instance in which it is acceptable for a firm not to populate the Related Market Center field.

In situations where there is a one-to-one relationship between associated tape and non-tape reports (that are not submitted to the same FINRA Facility), the following guidance applies. Where a single non-tape report is related to a single tape report, the firm must identify in the non-tape report the specific exchange or FINRA Facility to which the associated tape report was submitted. Where the initial leg of the transaction was executed on and reported through a foreign exchange, the firm must include a standard indicator for “foreign exchange”; firms are not required to identify the specific foreign exchange in the Related Market Center field.

In all other situations where there is not a one-to-one relationship between associated tape and non-tape reports, the following guidance applies. Where multiple tape reports are made to a single exchange or, in the case of OTC trades, a single FINRA Facility, that exchange or facility must be properly reflected in the associated non-tape report(s). Where multiple tape reports are made to different exchanges and/or FINRA Facilities, the firm is not required to identify the specific exchanges or facilities in the associated non-tape report(s), but is required to populate the Related Market Center field with a standard indicator representing “multiple venues.” By selecting “multiple venues,” a firm is affirmatively representing that it has a basis to believe the underlying transactions have been properly reported to the tape by more than one exchange or facility.

Firms have indicated to FINRA that where an order is routed to an exchange or to another firm (“routed venue”), a firm may not know where the trade was ultimately executed or, in the case of OTC trades, where the trade was ultimately reported. If the routed venue provides information about where the trade is tape reported, the firm must identify the exchange or FINRA Facility, as applicable, in the associated non-tape report(s). If, however, the routed venue does not provide such information and the firm has no other basis for identifying the relevant exchange or FINRA Facility, the firm must populate the Related Market Center field with a standard indicator representing “unknown venue.” By using the “unknown venue” code, a firm is affirmatively representing that the non-tape report is associated with a tape-reported trade execution, and the firm must be able to explain and document the circumstances for using this code (*e.g.*, the execution report from the routed venue does not specify the exchange where the trade was executed, or in the case of OTC trades, the FINRA Facility where the trade was tape reported). In instances where the firm knows that multiple tape reports were made to multiple exchanges and/or FINRA Facilities, the firm must report “multiple venues” instead of “unknown venue”—even though one or more of the multiple venues may be unknown to the firm.⁸

Tape Report	Populate Related Market Center Field in Associated Non-Tape Report With Indicator for...
Single tape report through a single exchange or FINRA Facility	Specific exchange or facility
Single tape report through a single foreign exchange	"Foreign exchange"
Multiple tape reports through a single exchange or FINRA Facility	Specific exchange or facility
Multiple tape reports through one or more foreign exchanges	"Foreign exchange"
Multiple tape reports through different exchanges and/or FINRA Facilities	"Multiple venues"
Routed venue provides information about where the trade was ultimately executed and/or reported	Specific exchange or facility
Routed venue does not provide information about where the trade was ultimately executed and/or reported	"Unknown venue"
Multiple tape reports through different exchanges and/or FINRA Facilities and one or more are unknown to the firm	"Multiple venues"
Non-tape report and associated tape report(s) submitted to the same FINRA Facility	Leave Related Market Center field blank (only instance this field is permitted to be blank)

Endnotes

- 1 A non-tape report is a report that is submitted to a FINRA Facility, but is not reported to and publicly disseminated by the appropriate exclusive Securities Information Processor. A regulatory report, referred to as a “non-tape, non-clearing” report, is submitted to FINRA solely to fulfill a regulatory requirement. A clearing report, referred to as a “clearing-only” report, is used by firms to clear and settle transactions; information reported to FINRA in a clearing report is transmitted by FINRA to the National Securities Clearing Corporation for clearance and settlement. Clearing reports also can be used to satisfy a firm’s obligation to provide regulatory information to FINRA, if applicable.
- 2 For purposes of OTC trade reporting requirements applicable to equity securities, a “riskless principal” transaction is a transaction in which a firm, after having received an order to buy (sell) a security, purchases (sells) the security as principal (the initial leg) and satisfies the original order by selling (buying) as principal at the same price (the offsetting, “riskless” leg).
- 3 See *Regulatory Notice 07-38* (August 2007).
- 4 See Securities Exchange Act Release No. 59905 (May 12, 2009), 74 FR 23455 (May 19, 2009) (order approving SR-FINRA-2007-012).
- 5 See FINRA Rules 7130(d), 7230A(i), 7230B(h) and 7330(h).
- 6 See *Trade Reporting Frequently Asked Questions*, FAQ 102.2, at www.finra.org/tradereportingfaq.
- 7 The applicable technical specifications can be found on the FINRA Web site at: www.finra.org/Industry/Compliance/MarketTransparency/index.htm.
- 8 FINRA notes that where a firm routes to an exchange and has a reasonable basis for reporting that the trade was executed on that exchange, FINRA would not consider it a violation if, unbeknownst to the firm, the trade is ultimately executed somewhere other than the routed exchange. The same approach holds true with respect to reporting to other FINRA Facilities. See *supra* note 4.

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Communications With the Public

FINRA Requests Comments on Proposed New Rules Governing Communications with the Public

Comment Period Expires: November 20, 2009

Executive Summary

FINRA requests comments on proposed new FINRA rules governing communications with the public. These new rules would replace current NASD Rules 2210 and 2211, the Interpretive Materials that follow NASD Rule 2210, and portions of Incorporated NYSE Rule 472. While the proposed rules are based upon these rules' current provisions, the new FINRA rules would employ new communications categories and require the filing of certain types of communications that currently are not required to be filed. The proposal also would make a number of other changes to the communications rules.

The [text of the proposed rules](http://www.finra.org/notices/09-55) is available on our Web site at www.finra.org/notices/09-55.

Questions concerning this *Notice* should be directed to:

- Joseph P. Savage, Vice President and Counsel, Investment Companies Regulation, at (240) 386-4534; or
- Thomas A. Pappas, Vice President and Director, Advertising Regulation, at (240) 386-4553.

September 2009

Notice Type

- Request for Comment
- Consolidated Rulebook

Suggested Routing

- Advertising
- Legal & Compliance
- Operations
- Senior Management

Key Topic(s)

- Communications With the Public
- Supervision

Referenced Rules & Notices

- NASD Rule 2210
- NASD IM-2210-1 through IM-2210-8
- NASD Rule 2211
- NASD Rule 3010
- NASD Rule 3110
- Incorporated NYSE Rule 472
- NTM 05-59
- Regulatory Notice 08-39
- Regulatory Notice 08-55
- Regulatory Notice 09-10
- SEA Rule 17a-4

Action Requested

FINRA encourages all interested parties to comment on the proposed new FINRA rules. Comments must be received by November 20, 2009. Firms and other interested parties can submit their comments using the following methods:

- Mail comments in hard copy to the address below; or
- Email written comments to pubcom@finra.org.

To help FINRA process and review comments more efficiently, persons commenting on these proposed changes should use only one method. Comments sent by hard copy should be mailed to:

Marcia E. Asquith
Senior Vice President and Corporate Secretary
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

Important Notes: The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA Web site. Generally, comments will be posted on the FINRA Web site one week after the end of the comment period.¹

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.²

Current Rules Governing Communications with the Public

NASD Rules 2210 and 2211, and the Interpretive Materials that follow Rule 2210, generally govern all FINRA firms' communications with the public. Incorporated NYSE Rule 472 governs communications with the public of member firms that also are members of the New York Stock Exchange.

NASD Rule 2210 divides communications into six separate categories, as follows:

- **Advertisement** generally includes written (including electronic) retail communications that do not have a limited audience, such as newspaper, magazine, television and radio advertisements, billboards and Web sites.
- **Sales literature** generally includes written (including electronic) retail communications that have a more targeted audience, such as brochures, performance reports, telemarketing scripts, seminar scripts and form letters.

- **Correspondence** includes written letters, electronic mail, instant messages and market letters sent to (i) one or more existing retail customers; and (ii) fewer than 25 prospective retail customers within a 30-calendar-day period.
- **Institutional sales material** includes communications that are distributed or made available only to institutional investors. NASD Rule 2211 defines the term “institutional investor” to include registered investment companies, insurance companies, banks, broker-dealers, investment advisers, certain retirement plans, governmental entities, individual investors and other entities with at least \$50 million in assets.
- **Independently prepared reprint** includes reprints of articles from independent publications, as well as reports published by independent research firms.
- **Public appearance** includes unscripted participation in live events, such as interviews, seminars and call-in television and radio shows.

These definitions are important because the principal approval, filing and content standards apply differently to each category. For example, firms generally must have a principal approve all advertisements, sales literature and independently prepared reprints prior to use. This pre-use approval requirement does not apply to (1) institutional sales material or (2) correspondence, unless it is sent to 25 or more existing retail customers and includes an investment recommendation or promotes a product or service of the firm. While such communications do not require principal approval, firms still must establish and maintain policies and procedures to supervise them for compliance with applicable standards.

Firms must file certain advertisements and sales literature for review with FINRA's Advertising Regulation Department. For example, advertisements and sales literature concerning investment companies and variable insurance products must be filed within 10 days of first use, but firms are not required to file independently prepared reprints, correspondence or institutional sales material. The filing requirements also differ based on the firm using the material and its content.

Firms that previously have not filed advertisements with FINRA must file all advertisements at least 10 business days prior to use for a one-year period. Additionally, under NASD Rule 2210 and related Interpretive Materials, all firms must file advertisements concerning government securities, collateralized mortgage obligations (CMOs) and security futures at least 10 business days prior to use, and must withhold them from publication until any changes specified by FINRA staff have been made.

Incorporated NYSE Rule 472 requires a “qualified person” to approve prior to use each advertisement, sales literature or other similar type of communication. The NYSE Rule 472 definitions of “advertisement” and “sales literature” are similar to those used in NASD Rule 2210.

The communications rules include both general and specific content standards. Certain general standards apply to all communications, such as requirements that communications be fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security, industry or service, and prohibitions on omitting material facts whose absence would make the communication misleading. More particular content standards apply to specific issues or securities.

Proposal

Reorganization of Rules

The proposal creates a new FINRA Rule 2210 that would encompass, subject to certain changes, the provisions of current NASD Rules 2210 and 2211, NASD Interpretive Materials 2210-1 and 2210-4, and the provisions of Incorporated NYSE Rule 472 that do not pertain to research analysts and research reports. Each of the other Interpretive Materials that follow NASD Rule 2210 would receive its own FINRA rule number and would adopt the same communication categories used in FINRA Rule 2210.³

Communication Categories

The proposal reduces the number of current communication categories from six to three, as follows:

- ▶ **Institutional communication** would include communications that fall under the current definition of “institutional sales material” — *i.e.*, communications that are distributed or made available only to institutional investors. “Institutional investor” would have the same definition as under NASD Rule 2211(a)(3).
- ▶ **Retail communication** would include any written (including electronic) communication that is distributed or made available to more than 25 retail investors. “Retail investor” would include any person other than an institutional investor, regardless of whether the person is an existing or prospective customer.
- ▶ **Correspondence** would include any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors, regardless of whether they are existing or prospective customers.

The proposal eliminates the current definitions of “advertisement,” “sales literature,” “institutional sales material,” “public appearance” and “independently prepared reprint” in NASD Rule 2210, as well as all of the definitions in NASD Rule 2211.⁴ The proposal also eliminates the definitions of “communication,” “advertisement,” “market letter” and “sales literature” in Incorporated NYSE Rule 472.

Communications that currently qualify as advertisements and sales literature generally would fall under the definition of “retail communication.” Communications that currently qualify as “institutional sales material” would fall within the definition of “institutional communication.”

Some communications that currently qualify as “correspondence” would continue to fall within that definition under the proposal. In addition, the proposed definition is not limited to form letters, market letters, electronic messages or instant messages, as it is under the current rule, but encompasses all communications distributed to 25 or fewer retail investors. However, communications sent to more than 25 retail investors in all cases would be considered retail communications.⁵

The proposal eliminates the terms “public appearance” and “independently prepared reprint.” However, as discussed below, the proposal largely incorporates the exceptions from the filing requirements and limited application of the content standards currently applicable to those communication categories. Also, public appearances that include recommendations of securities would be subject to new disclosure standards, as set forth below.

Approval, Review and Recordkeeping Requirements

Proposed FINRA Rule 2210(b)(1)(A) would require an appropriately qualified registered principal of the firm to approve each retail communication before the earlier of its use or filing with FINRA. The principal registration required to approve particular communications would depend upon the permissible activities for each principal registration category. The proposal eliminates Incorporated NYSE Rule 472(a)(1), which requires a “qualified person” to approve in advance each advertisement, sales literature or other similar type of communication by an NYSE member firm.

Proposed Rule 2210(b)(1)(B) continues to permit a Series 16 supervisory analyst approved pursuant to Incorporated NYSE Rule 344 to approve research reports on debt and equity securities. Proposed paragraph (b)(1)(C) maintains the current exception from the principal approval requirements for retail communications that another firm has filed with FINRA and that were found to meet applicable standards. Proposed paragraph (b)(1)(D) clarifies that the principal approval requirement does not apply to any retail communication that is solely administrative in nature.⁶

Proposed FINRA Rules 2210(b)(2) and (3) maintain the supervision and review standards for correspondence and institutional communications that currently are found in NASD Rules 2211 and 3010(d).

Proposed FINRA Rule 2210(b)(4)(A) sets forth the record-keeping requirements for retail and institutional communications. This provision incorporates by reference the record-keeping form and time period requirements of SEA Rule 17a-4. Paragraph (b)(4)(A) specifies that such records would have to include:

- a copy of the communication and the dates of first and (if applicable) last use;
- in the case of an institutional communication, the name of the person who prepared or distributed the communication;
- the name of any registered principal who approved the communication and the date approval was given;
- the source of any statistical table, chart, graph or other illustration used in the communication; and
- for retail communications that rely on the exception under paragraph (b)(1)(C), the name of the firm that filed the retail communication and a copy of FINRA's review letter.

Proposed FINRA Rule 2210(b)(4)(B) cross-references NASD Rules 3010(d) and 3110(a) with respect to correspondence record-keeping requirements.

Filing Requirements and Review Procedures

Proposed FINRA Rule 2210(c) generally incorporates the same filing requirements as NASD Rule 2210(c), subject to certain changes.

NASD Rule 2210(c)(5)(A) currently requires a firm that previously has not filed advertisements with FINRA or another self-regulatory organization to file its initial advertisement with FINRA at least 10 business days prior to use. This filing requirement continues for a year after the initial filing.

Proposed FINRA Rule 2210(c)(1)(A) alters the filing requirements for new firms in two respects. First, the proposal expands this new firm filing requirement to cover all retail communications, rather than just advertisements. Second, the proposal triggers the one-year filing requirement beginning on the effective date a firm becomes registered with FINRA, rather than on the date an advertisement is first filed with FINRA.

NASD Rule 2210(c)(4) currently requires firms to file certain communications at least 10 business days prior to first use and to withhold them from use until any changes specified by FINRA staff have been made. These communications include advertisements and sales literature for certain registered investment companies that include self-created rankings, advertisements concerning collateralized mortgage obligations (CMOs), and advertisements concerning security futures.

Proposed FINRA Rule 2210(c)(2) expands the categories of communications that fall within this pre-use filing requirement. These include retail communications concerning any registered investment company that include self-created rankings, retail communications concerning CMOs and security futures, and retail communications that include bond mutual fund volatility ratings.

The proposal also requires firms for the first time to file prior to use retail communications concerning any publicly offered securities derived or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency.⁷ The purpose of this provision is to require the filing of retail communications concerning publicly offered structured products, such as exchange-traded notes, that currently are not required to be filed. This provision excludes retail communications that already are subject to a separate filing requirement found elsewhere in proposed paragraph (c), such as retail communications concerning registered investment companies or public direct participation programs.

The proposal revises the current filing standards for retail communications concerning closed-end investment companies. Currently NASD Rule 2210 requires firms to file within 10 business days of first use advertisements and sales literature concerning a closed-end fund that are distributed during the fund's initial public offering (IPO) period, as well as all advertisements and sales literature concerning continuously offered (interval) closed-end funds.⁸ Proposed FINRA Rule 2210(c)(3)(A) requires firms to file all retail communications concerning closed-end funds within 10 business days of first use, including those that are distributed after the fund's IPO period. FINRA believes that investors deserve the same protections concerning retail communications about closed-end funds that are distributed after the IPO period as those that are distributed during the IPO.

Proposed FINRA Rule 2210(c)(5) specifies that a firm must provide with each filing the actual or anticipated date of first use, the name, title and Central Registration Depository number of the registered principal who approved the communication, and the date approval was given. These requirements generally reflect current FINRA policy.

Proposed FINRA Rule 2210(c)(7) generally duplicates the current exclusions from the filing requirements under NASD Rule 2210(c)(8), with certain modifications. Proposed paragraph (c)(7)(A) adds an exclusion for retail communications that are based on templates that were previously filed with FINRA, the changes to which are limited to updates of more recent statistical or other non-narrative information.⁹ Proposed paragraph (c)(7)(B) excludes retail communications that are solely administrative in nature.

Proposed paragraph (c)(7)(G) maintains but streamlines the exclusion for independently prepared reprints currently found in NASD Rule 2210(c)(8)(H). Although the proposal deletes language defining investment company research reports, it deems these communications part of the category of independently prepared reprints exempt from filing.

The proposal eliminates a current filing exclusion for press releases that are made available only to members of the media.¹⁰ FINRA staff has found that firms almost always post press releases on their Web sites, thus making them available to the general public. Accordingly, generally firms have not used this filing exclusion.

Content Standards

Proposed FINRA Rule 2210(d) reorganizes, but largely incorporates, the current content standards applicable to communications with the public that are found in NASD Rule 2210(d), NASD IM-2210-1, NASD IM-2210-4 and Incorporated NYSE Rules 472(i) and (j), subject to certain changes. Content standards that currently apply to advertisements and sales literature generally would apply to retail communications.

Proposed FINRA Rule 2210(d)(2)(B) expressly prohibits promissory statements or claims. FINRA staff already interprets NASD Rule 2210(d)(1)(B) to prohibit promissory language in firm communications and Incorporated NYSE Rule 472(i) specifically prohibits promissory statements.

Proposed paragraph (d)(3) applies the standards concerning disclosure of a firm's name to correspondence as well as to retail communications. Firms would be permitted to use the name under which a firm's broker-dealer business is conducted as disclosed on the firm's Form BD, as well as a fictional name by which a firm is commonly recognized or which is required by any state or jurisdiction.

Proposed paragraph (d)(4)(C) adds new language concerning comparative illustrations of the mathematical principles of tax-deferred versus taxable compounding. Much of this language reflects previous guidance that FINRA has provided regarding tax-deferral illustrations.¹¹ By placing this rule language in proposed FINRA Rule 2210, FINRA is clarifying that these standards apply to any illustration of tax-deferred versus taxable compounding, regardless of whether it appears in a communication promoting variable insurance products or some other communication, such as one discussing the benefits of investing through a 401(k) retirement plan or individual retirement account.¹²

NASD Rule 2210(d)(3) requires communications with the public, other than institutional sales material and correspondence, that present the performance of a non-money market mutual fund to disclose the fund's maximum sales charge and operating expense ratio as set forth in the fund's current prospectus fee table.

Proposed FINRA Rule 2210(d)(5) alters this standard by requiring disclosure of the maximum sales charge and total operating expense ratio based on the fund's prospectus or annual report, whichever is more current as of the date of publication or submission for publication of a communication.

Proposed Rule 2210(d)(7) revises in several ways the standards currently found in NASD IM-2210-1(6) applicable to communications that contain a recommendation.

First, the proposal applies these standards to retail communications, correspondence and public appearances. Currently the standards apply only to advertisements and sales literature.

Second, IM-2210-1(6)(A)(ii) requires a disclosure if the firm and/or its officers or partners have a financial interest in the securities of the recommended issuer and the nature of the financial interest. The proposal instead requires disclosure if the firm or any associated person with the ability to influence the substance of the communication has a financial interest in the recommended issuer and the nature of the financial interest. This change would substantially narrow the number of parties whose financial interests have to be disclosed, particularly for large firms with numerous officers and partners. It also would more closely align the recommendation provisions of proposed FINRA Rule 2210 with the disclosure standards of proposed FINRA Rule 2240 (which would replace current NASD Rule 2711 and portions of Incorporated NYSE Rule 472¹³) concerning research reports.

Third, proposed FINRA Rule 2210(d)(7)(C) amends the provisions governing communications that include past recommendations, which are currently found in NASD IM-2210-1(6)(C) and (D) and Incorporated NYSE Rule 472(j)(2). The new proposed standards mirror those found in Rule 206(4)-1(a)(2) under the Investment Advisers Act of 1940, which apply to investment adviser advertisements that contain past recommendations.

Under the proposed standard, retail communications and correspondence could set out or offer to furnish a list of all recommendations of the same type, kind, grade or classification of securities made by the firm within the immediate preceding period of not less than one year, if the communication stated the name of each recommended security, the date and nature of the recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most practicable date. The communication also would have to include a prescribed legend warning that future recommendations may not be as profitable.

Fourth, proposed FINRA Rule 2210(d)(7)(D) expressly excludes from its coverage communications that meet the definition of "research report" for purposes of proposed FINRA Rule 2240 and that include all of the applicable disclosures required by that rule. Proposed paragraph (d)(7)(D) also excludes any communication that recommends only registered investment companies or variable insurance products.

Proposed FINRA Rule 2210(e) replaces current NASD IM-2210-4, which addresses limitations on firms' use of FINRA's name and any other corporate name owned by FINRA. This provision adds language that codifies FINRA's current position that any reference to FINRA staff's review of a communication is limited to either "Reviewed by FINRA" or "FINRA Reviewed."

Proposed FINRA Rule 2210(f) sets forth the standards that apply to public appearances. Public appearances would have to meet the general "fair and balanced" standards of proposed FINRA Rule 2210(d)(1), and the standards applicable to recommendations contained in proposed paragraph (d)(7) if the public appearance included a recommendation of a security. In this regard, associated persons who recommend securities in public appearances generally would be subject to the same disclosure requirements under proposed FINRA Rule 2210(f) as research analysts that recommend securities in public appearances pursuant to NASD Rule 2711(h). The proposal also requires firms to establish appropriate written policies and procedures to supervise public appearances, and makes clear that scripts, slides, handouts or other written and electronic materials used in connection with public appearances are considered communications with the public for purposes of proposed FINRA Rule 2210.¹⁴

Use of Investment Company Rankings in Retail Communications

Proposed FINRA Rule 2212 replaces NASD IM-2210-3 with regard to standards applicable to the use of investment company rankings in communications. The standards generally would remain the same, but would apply to retail communications instead of advertisements and sales literature. The proposal adds a new paragraph (h) that excludes from the rule's coverage reprints or excerpts of articles or reports that are excluded from FINRA's filing requirements pursuant to proposed FINRA Rule 2210(c)(7)(G).

Requirements for the Use of Investment Analysis Tools

Proposed FINRA Rule 2214 replaces NASD IM-2210-6 with regard to standards applicable to the use of investment analysis tools with retail customers. The standards would remain the same, but some language that is currently contained either in IM-2210-6's text or in footnotes would be moved to supplementary material.

Guidelines for Communications With the Public Regarding Security Futures

Proposed FINRA Rule 2215 replaces NASD IM-2210-7 with regard to standards applicable to communications concerning security futures. Proposed FINRA Rule 2215 revises the current standards in several respects to conform to NASD Rule 2220.¹⁵

First, portions of NASD IM-2210-7 apply only to advertisements. Proposed FINRA Rule 2215 applies these provisions to all retail communications.

Second, the proposal amends the provisions that require communications concerning security futures to be accompanied or preceded by the security futures risk disclosure document under certain circumstances. As revised, a communication concerning security futures would have to be accompanied or preceded by the risk disclosure document if it contained the names of specific securities.

Third, proposed paragraph (b)(2)(A) prohibits security future communications that contain any statement suggesting the certain availability of a secondary market for security futures. Fourth, proposed paragraph (b)(2)(C) requires any statement referring to the potential opportunities or advantages presented by security futures to be balanced by a statement of the corresponding risks, and requires the same degree of specificity.

Fifth, proposed paragraph (b)(4)(D) clarifies that communications that contain the historical performance of security futures must disclose all relevant costs, which must be reflected in the performance.

Endnotes

- 1 *See Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
- 2 Section 19 of the Securities Exchange Act of 1934 (Exchange Act or SEA) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has authority to summarily abrogate these types of rule changes within 60 days of filing. *See Exchange Act Section 19 and the rules thereunder.*
- 3 Proposed FINRA Rule 2211 (Communications with the Public About Variable Insurance Products), which replaces NASD Interpretive Material 2210-2, is the subject of a separate, proposed rule change. *See Regulatory Notice 08-39* (July 2008) (FINRA Requests Comments on Proposed New Rules Governing Communications About Variable Insurance Products).
- 4 NASD Rule 2211 currently defines the terms “correspondence,” “institutional sales material,” “institutional investor,” “existing retail customer,” “prospective retail customer” and “market letter.”
- 5 The definition of “correspondence” in NASD Rule 2211 currently includes market letters as well as written letters and electronic mail messages that are sent to one or more existing retail customers and fewer than 25 prospective retail customers. FINRA revised the definition of “correspondence” to include market letters in February 2009 in order to allow firms to send market letters to traders and other investors who base their decisions on timely market analysis without having to have a principal approve them in advance. Previously, firms were required to approve market letters prior to use, which sometimes inhibited the flow of information to these parties. *See Regulatory Notice 09-10* (SEC Approves Rule Relating to Supervision of Market Letters) (Feb. 2009).
- Proposed FINRA Rule 2210 continues to allow firms to send communications (including market letters) to institutional investors without having a principal approve such communications prior to use. FINRA believes that, by continuing to allow firms to send information to institutional investors without principal approval, the proposed rule change largely addresses the concerns that led to including market letters within the current definition of “correspondence.”
- 6 This exception to the principal approval requirement for administrative communications is similar to the current exclusion from FINRA’s filing requirements for advertisements and sales literature solely related to recruitment or changes in a firm’s name, personnel, electronic or postal address, ownership, offices, business structure, partners, telephone and teletype numbers, or concerning a merger with, or acquisition by, another firm. *See NASD Rule 2210(c)(8)(B).*
- 7 This proposed rule language is derived from a description of the term “structured product” in *Notice to Members 05-59* (September 2005) (NASD Provides Guidance Concerning the Sale of Structured Products) and is intended to cover retail communications concerning such products.

Endnotes continued

- 8 See "Ask the Analyst," *Regulatory & Compliance Alert* (Winter 1999) p. 13.
- 9 This exclusion is based in part on an earlier staff interpretation concerning how NASD Rule 2210's approval, record-keeping and filing requirements apply to statistical updates contained in pre-existing templates. See Letter from Thomas M. Selman, NASD, to Forrest R. Foss, T. Rowe Price Associates, Inc. (Jan. 28, 2002).
- 10 See NASD Rule 2210(c)(8)(G).
- 11 See "NASD Reminds Members of Their Responsibilities Regarding Hypothetical Tax-Deferral Illustrations in Variable Annuity Illustrations," *Member Alert* (May 10, 2004).
- 12 FINRA previously published this proposed rule language for comment as part of proposed changes to the rules governing communications about variable insurance products. See *Regulatory Notice 08-39* (July 2008) (FINRA Requests Comments on Proposed New Rules Governing Communications About Variable Insurance Products). Proposed FINRA Rule 2210 would incorporate these earlier proposed changes, which have been removed from the rule proposal concerning variable insurance products communications. FINRA expects to file with the SEC the proposed rule change to adopt FINRA Rule 2211 regarding communications with the public about variable insurance products in the near future.
- 13 See *Regulatory Notice 08-55* (October 2008).
- 14 The requirement to establish supervisory policies and procedures for public appearances is consistent with NASD Rule 3010(b) and Incorporated NYSE Rule 472(I).
- 15 FINRA is proposing to adopt NASD Rule 2220 (Options Communications) without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 2220. See SEC Rel. No. 34-60066 (June 8, 2009), 74 Fed. Reg. 28308 (June 15, 2009).

Regulatory Pricing Proposal

Proposed Changes to the Personnel Assessment and Gross Income Assessment Fees

Effective Date: Upon SEC Approval With an Implementation Date of January 1, 2010.

Executive Summary

On August 20, 2009, FINRA filed with the SEC a proposal to change FINRA's regulatory pricing structure by restructuring the Personnel Assessment and Gross Income Assessment fees in order to stabilize revenues used to fund FINRA's regulatory activities.¹ If approved, the pricing changes would take effect on January 1, 2010. The SEC has published the proposal for comment. FINRA encourages firms to send comments to the SEC by the October 2, 2009, deadline.

Questions concerning this *Notice* should be directed to:

- ▶ Finance at (240) 386-5397; or
- ▶ the Office of General Counsel at (202) 728-8071.

Background and Discussion

FINRA's primary pricing structure consists of the following fees: the Personnel Assessment (PA), the Gross Income Assessment (GIA), the Trading Activity Fee and the Branch Office Assessment. These fees are used to fund FINRA's regulatory activities, including its examination and enforcement programs.

September 2009

Notice Type

- ▶ Proposed Rule Amendments

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management

Key Topic(s)

- ▶ Regulatory Fees
- ▶ Gross Income Assessment
- ▶ Personnel Assessment

Referenced Rules & Notices

- ▶ Regulatory Notice 08-07
- ▶ Sections 1 and 2 of Schedule A of the By-Laws

FINRA has filed with the SEC a proposed rule change that would restructure the PA and GIA to achieve a more consistent and predictable funding stream to ensure FINRA can carry out its regulatory mandate. The economic and industry downturns experienced in 2008 and 2009 have strained FINRA's financial resources, yet its regulatory responsibilities remain constant, if not increased, and its programs robust. While FINRA management already has implemented a comprehensive cost-reduction plan and will continue to seek cost savings that do not in any way compromise its regulatory mission, FINRA believes the proposed rule change is needed to stabilize its revenues and provide protection against future industry downturns.

The GIA remains the most important component of FINRA's regulatory funding. The GIA currently is assessed through a seven-tiered rate structure with a minimum GIA of \$1,200. Under the current GIA, firms are required to pay an annual GIA as follows:

- (1) \$1,200 on annual gross revenue up to \$1 million;
- (2) 0.1215% of annual gross revenue greater than \$1 million up to \$25 million;
- (3) 0.2599% of annual gross revenue greater than \$25 million up to \$50 million;
- (4) 0.0518% of annual gross revenue greater than \$50 million up to \$100 million;
- (5) 0.0365% of annual gross revenue greater than \$100 million up to \$5 billion;
- (6) 0.0397% of annual gross revenue greater than \$5 billion up to \$25 billion; and,
- (7) 0.0855% of annual gross revenue greater than \$25 billion.

For 2010, the current year GIA would remain subject to the cap set forth in *Regulatory Notice 08-07* (February 2008), which describes the new funding structure that resulted from the consolidation of NASD's and the New York Stock Exchange's member regulation operations. FINRA states in the *Notice* that it will apply a 10-percent cap on any increase or decrease to a firm's 2010 current year GIA resulting from the new pricing structure implemented in January 2008.

Since the GIA is assessed based on a firm's annual gross revenue for the preceding calendar year,² FINRA's revenues derived from the GIA are subject to the year-to-year volatility of firms' revenues. In years where industry revenues are significantly down, FINRA's operating revenues can drop precipitously: in 2009, for example, GIA revenues are down approximately 37 percent due to 2008 fourth quarter write-offs taken by firms, particularly the largest ones. In 2009, FINRA absorbed a \$100 million revenue shortfall from the GIA. While this did not hinder FINRA's ability to fulfill its regulatory mission, this type of revenue loss cannot be sustained in the future.

The proposed rule change seeks to ameliorate this vulnerability by smoothing out the volatility inherent in the GIA as well as by shifting some of FINRA's revenue generation to the more consistent PA revenue stream. For the GIA, the proposed rule change would further amend Schedule A to assess a GIA of the greater of (1) the amount that would be the GIA based on the existing rate structure (current year GIA) or (2) a three-year average of the GIA to be calculated by adding the current-year GIA plus the GIA assessed on the firm over the previous two calendar years, divided by three. For a newer firm that has only been assessed in the prior year, FINRA would compare the current year GIA to the two-year average and assess the greater amount. The existing GIA rate structure and phase-in implementation through 2010 would remain the same.³ Accordingly, the proposed rule change would preserve the current rate structure, while building a buffer against industry downturns. FINRA notes that it has a history of providing rebates to firms when revenues exceed the expenditures necessary to discharge its regulatory obligations and is committed to continuing that practice in the future.

The proposed rule change also shifts revenues previously generated from the GIA to the PA, which is a more stable revenue base. The PA is currently assessed on a three-tiered rate structure: firms with one to five registered representatives and principals are assessed \$75 for each such registered person; 6 to 25 registered persons, \$70 each; and 26 or more registered persons, \$65 each. The proposed rule change would increase those rates to \$150, \$140 and \$130, respectively, based on the same tiered structure. This proposal represents the first PA rate increase in more than five years. Moreover, given the correlation between the cost of FINRA's regulatory programs and the number of registered persons within a firm, FINRA notes that the population of registered persons has remained fairly stable, even throughout the recent economic downturn.⁴ Accordingly, FINRA believes an increase of the PA is both a fair and appropriate means to achieve a more consistent and reliable foundation to fund its regulatory operations.

FINRA believes the proposed rule change will stabilize its operating cash flows by augmenting revenues based on the registered person population, where FINRA's costs are more closely aligned, and reducing dependency on, and exposure to, less predictable industry revenues. In aggregate, the fee proposal would result in regulatory fees comparable to those realized in 2008. FINRA estimates that if the proposed rule change had been in effect for 2009, it would have replaced about 90 percent of the revenue shortfall that resulted primarily from the significant drop in GIA receipts. In general, those replacement revenues would come from several larger firms whose steep income declines in 2008 primarily account for FINRA's current revenue deficit.

SEC Request for Comment

The SEC requests comment on the regulatory pricing proposal. The comment period expires **October 2, 2009**. The rule proposal will be implemented upon SEC approval with an effective date of **January 1, 2010**.

Endnotes

- 1 Exchange Act Release No. 60624 (September 3, 2009), 74 FR 46828 (September 11, 2009) (Notice of Filing of SR-FINRA-2009-057).
- 2 Gross revenue for assessment purposes is set out in Section 2 of Schedule A, which defines gross revenue as total income as reported on FOCUS form Part II or IIA excluding commodities income.
- 3 In addition, the proposed rule change would remain subject to the caps on increases and decreases to GIA set forth in *Regulatory Notice 08-07* (February 2008). The actual amount of GIA assessed in any given year—*e.g.*, the capped amount or the three-year average—will be used to calculate subsequent three-year average determinations. The caps, if applicable, would be applied to the current-year assessment and the resulting number would be used to calculate the three-year average.
- 4 For example, FINRA records show that since 2000, the average number of registered persons per year has been approximately 667,680 and that for each of the past three years the population has been 669,626 (2009), 676,927 (2008) and 662,742 (2007) (based on numbers at the end of the preceding calendar year).

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Trade Reporting and Compliance Engine (TRACE)

SEC Approves Amendments Expanding TRACE to Include Agency Debt Securities and Primary Market Transactions

Effective Date: March 1, 2010

Executive Summary

The SEC approved major amendments to the TRACE Rules (FINRA Rule 6700 Series) and FINRA Rule 7730 relating to TRACE fees that will increase the number and type of securities and transactions that will be reported to TRACE. The changes become effective March 1, 2010.

Debt securities that are issued or guaranteed by an Agency or by a Government-Sponsored Enterprise (collectively, Agency Debt Securities) will become TRACE-Eligible Securities, and transactions in such securities will be reported and disseminated. Primary market transactions in TRACE-Eligible Securities will be Reportable TRACE Transactions. For certain primary market transactions—List or Fixed Offering Price Transactions or Takedown Transactions—several significant exceptions to the current TRACE requirements will apply:

- the reporting period for List or Fixed Offering Price Transactions and Takedown Transactions will be extended to the close of business of the day following the day of execution (*i.e.*, to 6:30 p.m. Eastern Time on T+1);
- member firms reporting such transactions will not be required to pay a standard transaction reporting fee; and
- transaction information will not be disseminated.

September 2009

Notice Type

- Rule Amendment
- New Rule

Suggested Routing

- Compliance
- Executive Representatives
- Fixed Income
- Legal
- Operations
- Sales
- Senior Management
- Systems
- Trading
- Training

Key Topic(s)

- Agency Debt Security
- Dissemination
- Emergency Suspension
- Fees
- Government-Sponsored Enterprise
- List or Fixed Offering Price Transaction
- New Issue Notification
- Primary Market Transaction
- Reportable TRACE Transaction
- Takedown Transaction
- TRACE-Eligible Security

Referenced Rules & Notices

- FINRA Rule Series 6700
- FINRA Rule 7730
- NASD Rule 11310(d)

The SEC also approved new FINRA Rule 6770, granting FINRA emergency authority to suspend the reporting and/or dissemination of certain transactions in TRACE-Eligible Securities, or certain reporting or dissemination requirements as market conditions warrant and in consultation with the SEC.

These and other related amendments to the TRACE Rules and FINRA Rule 7730, which the SEC approved on September 28, 2009, are discussed below.¹ The [amended rule text](http://www.finra.org/notices/09-57) is available on our Web site at www.finra.org/notices/09-57.

Questions regarding this *Notice* should be directed to:

- ▶ Elliot R. Levine, Associate Vice President and Counsel, Transparency Services, at (202) 728-8405;
- ▶ Sharon Zackula, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8985; or
- ▶ Patrick Geraghty, Director, Market Regulation, at (240) 386-4973.

Background and Discussion

The SEC approved amendments to the FINRA Rule 6700 Series and FINRA Rule 7730 that will expand transparency in the debt securities markets by adding a significant number of securities—all Agency Debt Securities—to TRACE, and by requiring that all primary market transactions in any TRACE-Eligible Security be reported to TRACE.

The amendments:

1. expand TRACE to include Agency Debt Securities as TRACE-Eligible Securities and restate the definition of TRACE-Eligible Security, including deleting the criteria that a security be Investment Grade or Non-Investment Grade and depository eligible under NASD Rule 11310(d) to be a TRACE-Eligible Security in FINRA Rule 6710(a);
2. in connection with adding Agency Debt Securities to TRACE, incorporate the following new defined terms into FINRA Rule 6710: “Agency,” “Agency Debt Security,” “Asset-Backed Security,” “Government-Sponsored Enterprise” (“GSE”), “Money Market Instrument” and “U.S. Treasury Security”;
3. expand TRACE to include primary market transactions as Reportable TRACE Transactions, as defined in FINRA Rule 6710(c), and in connection therewith, incorporate two additional defined terms, “List or Fixed Offering Price Transaction” and “Takedown Transaction,” in FINRA Rule 6710;
4. require member firms to report transactions in Agency Debt Securities and primary market transactions under FINRA Rule 6730, and incorporate certain modified trade reporting requirements applicable to List or Fixed Offering Price Transactions and Takedown Transactions in FINRA Rule 6730(a)(5) and FINRA Rule 6730(d)(4)(D);

5. provide for the dissemination of information on transactions in Agency Debt Securities and primary market transactions under FINRA Rule 6750, except List or Fixed Offering Price Transactions and Takedown Transactions, as provided in FINRA Rule 6750(b)(3);
6. regarding notification requirements in Rule 6760, establish an alternative notification requirement when a new TRACE-Eligible Security is not assigned a CUSIP; require notification of the time when a new issue is priced and, if different, the time when the first transaction in the distribution or offering is executed; and extend the period for a firm to timely provide all information required in the member firm's notice to FINRA regarding a new TRACE-Eligible Security when the new issue is priced and commences on the same business day between 9:30 a.m. Eastern Time (ET) and 4:30 p.m. ET;
7. grant FINRA emergency authority to suspend the reporting and/or dissemination of certain transactions in TRACE-Eligible Securities, or the reporting of certain data elements otherwise required to be reported and/or the dissemination of certain data elements, as market conditions warrant and in consultation with the SEC in new FINRA Rule 6770; and
8. apply the fee rates currently in effect in FINRA Rule 7730 to transactions in Agency Debt Securities and primary market transactions, and do not require firms to pay a reporting fee when reporting List or Fixed Offering Price Transactions and Takedown Transactions as provided in FINRA Rule 7730(b)(1); distinguish TRACE market data relating to corporate debt from market data relating to Agency Debt Securities (the Agency Data Set); and establish fees for the new Agency Data Set in Rule 7730 generally, including fees that are incorporated in FINRA Rule 7730(a)(1) for "Web Browser Access."²

The most significant changes to the FINRA Rule 6700 Series and FINRA Rule 7730 regarding the expansion of the TRACE program are highlighted below.

Agency Debt Securities

Under the current definition of TRACE-Eligible Security in FINRA Rule 6710(a), among other criteria, a security must be issued by a U.S. or foreign private issuer to be a TRACE-Eligible Security, which makes any security issued by an agency of the U.S. government ineligible.³ In addition, certain types of securities, including a security issued by a GSE, are specifically excluded from the defined term TRACE-Eligible Security.⁴

The amendments expand the term TRACE-Eligible Security to include a debt security that is issued or guaranteed by an Agency or a GSE. For purposes of FINRA Rule 6710(k), "Agency" will be defined by incorporating a broad statutory term, "executive agency," from 5 U.S.C. 105. Although the U.S. Department of the Treasury is defined as an executive agency under this federal statutory provision, for purposes of TRACE, the term "Agency" will not include the U.S. Treasury in the exercise of its authority to issue U.S. Treasury Securities.⁵

GSEs were created at different times and for different purposes, do not present uniform structures and, prior to and after the market events in 2008, have not been treated uniformly under various federal regulatory schemes. In FINRA Rule 6710(n), FINRA has defined an issuer or guarantor that is a GSE for purposes of TRACE by reference to the statutory definition in 2 U.S.C. 622(8).⁶ Fannie Mae and Freddie Mac are examples of issuers or guarantors that are GSEs.⁷

Under new FINRA Rule 6710(l), the securities of both types of issuers (or guarantors of issues) will be defined collectively as “Agency Debt Securities,” which reflects industry convention. Specifically, under FINRA Rule 6710(l) “Agency Debt Security” will be defined as a debt security (i) issued or guaranteed by an Agency as defined in paragraph (k); or (ii) issued or guaranteed by a GSE as defined in paragraph (n). The definition also explicitly excludes U.S. Treasury Securities.

Several of the institutions that are defined as Agencies or GSEs, such as Ginnie Mae,⁸ Freddie Mac and Fannie Mae, are well-known issuers or guarantors of mortgage-backed and other structured securities. However, for purposes of TRACE, such securities, which are Asset-Backed Securities as broadly defined in FINRA Rule 6710(m), will not be included in the definition of TRACE-Eligible Security, as amended.⁹

With the foregoing parameters included, a TRACE-Eligible Security will be defined in amended FINRA Rule 6710(a) as:

a debt security that is United States dollar-denominated and issued by a U.S. or foreign private issuer, and, if a “restricted security” as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; or is a debt security that is U.S. dollar-denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n). “TRACE-Eligible Security” does not include a debt security that is:

- (1) issued by a foreign sovereign or is a U.S. Treasury Security as defined in paragraph (p);
- (2) a Money Market Instrument as defined in paragraph (o); or
- (3) an Asset-Backed Security as defined in paragraph (m).

Primary Market Transactions

FINRA Rule 6710(c) currently defines “Reportable TRACE Transaction” as any secondary market transaction in a TRACE-Eligible Security except transactions that are not reported as specified in FINRA Rule 6730(e). As amended, FINRA Rule 6710(c) is not limited to secondary market transactions, and firms will be required to report primary market transactions in any TRACE-Eligible Security.

FINRA has identified two types of primary market transactions, List or Fixed Offering Price Transactions and Takedown Transactions, that will be subject to more liberal trade reporting requirements and two other significant modifications to the current TRACE requirements due to the nature of the transactions and the assumption that such transactions (in a single security) will be executed at a single price. A List or Fixed Offering Price Transaction will be defined in FINRA Rule 6710(q) as:

a primary market sale transaction sold on the first day of trading of a new issue: (i) by a sole underwriter, syndicate manager, syndicate member or selling group member at the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser, syndicate manager, syndicate member or selling group member at the published or stated fixed offering price.

A Takedown Transaction will be defined similarly in Rule 6710(r).¹⁰

The current TRACE requirements that will be modified for List or Fixed Offering Price Transactions and Takedown Transactions are:

- List or Fixed Offering Price Transactions and Takedown Transactions will not be subject to 15-minute reporting. Instead, member firms will be permitted to report a List or Fixed Offering Price Transaction or a Takedown Transaction that is executed on a business day at or after 12:00 a.m. ET through 11:59:59 p.m. ET, not later than T+1 during TRACE system hours under Rule 6730(a)(5).¹¹
- List or Fixed Offering Price Transactions and Takedown Transactions will not be disseminated as provided in FINRA Rule 6750(b)(3).
- A member firm that reports timely a List or Fixed Offering Price Transaction or a Takedown Transaction will not be required to pay the standard transaction reporting fee set forth in FINRA Rule 7730(b)(1). However, firms that report such transactions incorrectly or late will incur “Cancel/correct” and “As/of Trade Late” fees.

Emergency Authority

Under new Rule 6770, FINRA will possess emergency authority regarding TRACE. FINRA may suspend the reporting and/or dissemination of certain transactions in TRACE-Eligible Securities, or the reporting of certain data elements that are otherwise required to be reported under FINRA Rule 6730, and/or the dissemination of certain data elements, as market conditions warrant and in consultation with the SEC.

Conclusion

Effective March 1, 2010, firms must begin reporting transactions in Agency Debt Securities and primary market transactions and otherwise comply with all other requirements in the TRACE Rules, as amended, and amended FINRA Rule 7730.

Endnotes

- 1 See Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA- 2009-010).
- 2 Other changes that will be incorporated in the TRACE Rules and FINRA Rule 7730 include amendments to: 1) FINRA Rule 6710(h) to state that FINRA will classify an unrated Agency Debt Security as an Investment Grade security for purposes of the dissemination of transaction volume; and 2) the FINRA Rule 6700 Series and FINRA Rule 7730 to incorporate minor amendments that conform or clarify rule text or eliminate unnecessary provisions.
- 3 In addition, FINRA Rule 6710(a) requires that a security that is a TRACE-Eligible Security be U.S. dollar denominated; depository eligible under NASD Rule 11310(d); Investment Grade or Non-Investment Grade (as defined, respectively, in FINRA Rules 6710(h) and (i)); and, if a “restricted security” as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A.
- 4 Other securities that are excluded are mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments (having at issuance a maturity of one year or less).
- 5 Specifically, “Agency” will be defined in FINRA Rule 6710(k) as:
 - a U.S. “executive agency” as defined in 5 U.S.C. 105 that is authorized to issue debt directly or through a related entity, such as a government corporation, or to guarantee the repayment of principal and/or interest of a debt security issued by another entity. The term excludes the U.S. Department of the Treasury (Treasury) in the exercise of its authority to issue U.S. Treasury Securities as defined in paragraph (p).

5 U.S.C. 105 defines “executive agency” broadly to include “an Executive department, a Government corporation, and an independent establishment.” Debt securities issued by most government agencies or government-affiliated entities will be included under this definition. “Executive department” is defined in 5 U.S.C. 101 to include cabinet-level agencies or departments (*e.g.*, the Department of State, the Department of the Treasury, the Department of Commerce, the Department of Homeland Security, etc.). “Government Corporation” is defined in 5 U.S.C. 103 as “a corporation owned or controlled by the Government of the United States....” (*e.g.*, the Pension Benefit Guaranty Corporation is a wholly owned government corporation). “Independent establishment” is defined in 5 U.S.C. 104 as “(1) an establishment in the executive branch (other than the United States Postal Service or the Postal Regulatory Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and (2) the General Accounting Office.” (For example, the Federal Reserve Banks are independent establishments.)

Endnotes Continued

- 6 In FINRA Rule 6710(l), the definition of Agency Debt Security will provide, in pertinent part, that the term Agency Debt Security excludes “an Asset-Backed Security as defined in paragraph (m) where an Agency or a Government-Sponsored Enterprise is the sponsor of the trust or other entity that issues the Asset-Backed Security, or is the guarantor of the Asset-Backed Security.”
- 7 Fannie Mae is the Federal National Mortgage Association. Freddie Mac is the Federal Home Loan Mortgage Corporation.
- 8 Ginnie Mae is the Government National Mortgage Association.
- 9 In FINRA Rule 6710(m) “Asset-Backed Security” will mean:
- an asset-backed security as used in Securities Act Regulation AB, Section 1101(c), a mortgage-backed security, a collateralized mortgage obligation, a synthetic asset-backed security, or any instrument involving or based on the securitization of mortgages or other credits or assets, including but not limited to a collateralized debt obligation, a collateralized bond obligation, a collateralized debt obligation of asset-backed securities or a collateralized debt obligation of collateralized debt obligations.
- 10 Specifically, a Takedown Transaction will be defined in FINRA Rule 6710(r) as:
- a primary market sale transaction sold on the first day of trading of a new issue: (i) by a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser or syndicate manager to a syndicate or selling group member at a discount from the published or stated fixed offering price.
- 11 Like FINRA Rule 6730(a)(4), FINRA Rule 6730(a)(5) will include extended reporting periods for transactions that occur on a Saturday, a Sunday, or a federal or religious holiday when the TRACE system is closed.
- Under FINRA Rule 6730(d)(4)(D), members will be required to append the new indicator that identifies List or Fixed Offering Price Transactions and Takedown Transactions when reporting such transactions.

Information Notice

Publication of Daily and Monthly Short Sale Reports on the FINRA Web Site

Executive Summary

Beginning September 30, 2009, FINRA will publish on its Web site a Monthly Short Sale Transaction File to provide public access to certain transaction data, including transaction times, price, and number of shares for every short sale transaction in an NMS stock. FINRA also will begin publishing a Daily Short Sale Volume File in the fourth quarter of 2009, which will provide aggregate daily short sale volume data by security for NMS stocks and OTC Equity Securities.

The short sale data files may be found online as they become available at: www.finra.org/trf/regsho and www.finra.org/adf/regsho.

Questions regarding this *Notice* should be directed to FINRA Operations at (866) 776-0800.

Background and Discussion

In furtherance of the SEC's efforts to increase the public availability of short sale-related information, FINRA, in addition to other self-regulatory organizations, is publishing certain monthly short sale transaction files and daily aggregate short sale volume files.¹ Specifically, FINRA will begin publishing on its Web site: (1) monthly short sale transaction data by security for NMS stocks,² and (2) aggregate daily short sale volume data by security for NMS stocks and OTC Equity Securities.³

September 29, 2009

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Trading and Market Making

Key Topics

- Short Sales

Referenced Rules

- Regulation NMS
- FINRA Rule 6420

Monthly Short Sale Transaction File

Beginning September 30, 2009, FINRA will publish a Monthly Short Sale Transaction File. Each monthly file, which will be posted by the last day of each calendar month, will include the data relating to the prior month's short sale transaction activity. For example, short sale data for August 2009 will be posted by September 30, 2009, and short sale data for September 2009 will be posted by October 31, 2009. The Monthly Short Sale Transaction File will include trade information for short sale transactions in NMS stocks reported to the Alternative Display Facility or a Trade Reporting Facility during regular and after-market hours that are submitted by FINRA to a tape plan for dissemination purposes.

The Monthly Short Sale Transaction Files will include the:

- market center reported on the tape;
- ticker symbol or other symbols used for trading by the market center;
- date that the trade was reported to the tape;
- reported trade time (Eastern Standard Time [EST]);
- size of the trade in mixed or round lots as reported to the tape; and
- price of the trade as reported to the tape.

FINRA will retain on the FINRA Web site one year of historical monthly short sale transaction data beginning with the data to be published on September 30, 2009.

Daily Short Sale Volume File

The Daily Short Sale Volume File will provide daily access to the aggregate volume of short sales in NMS Stocks and OTC Equity Securities reported to a consolidated tape and traded over-the-counter during regular trading hours on each trading day. FINRA will post the Daily Short Sale Volume File within a reasonable amount of time after the end of regular trading hours on each trading day. Specifically, the Daily Short Sale Volume File will include the following:

- trade date;
- trading symbol;
- aggregate reported share volume of executed short sale trades during regular trading hours;
- aggregate reported share volume of all executed trades during regular trading hours; and
- market identifier.

Unlike the Monthly Short Sale Transaction File, the Daily Short Sale Volume File will be limited to short sale transactions executed during regular trading hours (generally between 9:30 a.m. and 4:00 p.m. EST). FINRA expects initial publication of the Daily Short Sale Volume File to commence in October 2009, but no later than the end of the fourth quarter of 2009. Upon publication, FINRA also will include daily files retroactive to August 3, 2009. FINRA will retain on its Web site one year of historical daily short sale data from the date of initial publication onward on a rolling basis.⁴

Endnotes

- 1 See SEC Takes Steps to Curtail Abusive Short Sales and Increase Market Transparency (July 27, 2009), available at www.sec.gov/news/press/2009/2009-172.htm.
- 2 Rule 600 of SEC Regulation NMS defines “NMS stock” as any “NMS security” other than an option, and further defines “NMS security” as any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.
- 3 FINRA Rule 6420 defines “OTC Equity Security” as any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.
- 4 Additional information regarding the daily and monthly files is available in SR-FINRA-2009-064, which was filed with the SEC on September 24, 2009, to set forth specific information and clarifications regarding the content and parameters of the daily and monthly files.

Election Notice

FINRA Small Firm Advisory Board Election

Executive Summary

The purpose of this *Notice* is to inform FINRA small firm members¹ of the upcoming Small Firm Advisory Board (SFAB) election. Two seats on the SFAB are up for election: the North Region and West Region seats.

The SFAB provides guidance to FINRA staff, particularly regarding the potential impact of proposed regulatory initiatives on FINRA's small firms, and meets five times a year in Washington, DC, prior to each FINRA Board of Governors meeting. SFAB members are expected to attend SFAB meetings in person, and may be requested to attend certain regional, district and other FINRA meetings. Potential candidates should ensure that their other commitments will allow for in-person attendance at all SFAB meetings.

Any eligible candidate wishing to have their name added to the ballot must submit the relevant information via a candidate profile form to the Corporate Secretary of FINRA by Friday, October 2, 2009. The candidate profile form is available online at www.finra.org/notices/election/090409 and as an attachment to this *Notice*.

On or about Friday, October 23, 2009, FINRA will mail the official *Election Notice* and ballots to the executive representatives of small firms in the North and West Regions to elect the two regional members of the SFAB. Voting will conclude in November 2009 and new members will take office in January 2010.

Questions regarding this *Election Notice* may be directed to:

- Marcia E. Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949;
- T. Grant Callery, Executive Vice President and General Counsel (Corporate), at (202) 728-8285; or
- Chip Jones, Senior Vice President, Member Relations, at (240) 386-4797.

September 4, 2009

Suggested Routing

- Executive Representatives
- Senior Management

Composition of the FINRA Small Firm Advisory Board

The SFAB comprises ten members:

- ▶ five regional members elected by small firms in the five FINRA regions (one from each region); and
- ▶ five at-large members appointed by FINRA.

Additionally, the FINRA Board's Small Firm Governors² serve as ex-officio members of the SFAB.

The five regional members represent the following geographic regions:

- Midwest Region:** Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Districts 4 and 8)
- New York Region:** New York (the counties of Nassau and Suffolk, and the five boroughs of New York City) (District 10)
- North Region:** Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City), Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia (Districts 9 and 11)
- South Region:** Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, the Canal Zone,
- West Region:** Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and the former U.S. Trust Territories (Districts 1, 2 and 3)

As mentioned above, two seats on the SFAB are up for election: the North Region seat and the West Region seat.

Candidate Eligibility

Any senior member of a small firm whose primary place of business and whose firm has its main office (as indicated in FINRA records) in the North or West regions is eligible to have his or her name placed on the SFAB ballot for that region. Senior members of firms include owners, chief executive officers, presidents, chief compliance officers, chief operating officers, FINOPs or individuals of comparable status. Eligible individuals must complete the SFAB candidate profile form³ and submit it, through their firm's executive representative, to FINRA's Corporate Secretary. There may be only one candidate per firm on each ballot.

SFAB candidate profiles for the upcoming election must be received by the Corporate Secretary of FINRA by Friday, October 2, 2009.

FINRA's Corporate Secretary will confirm the firm's status as a small firm and the candidate's eligibility, and include certified candidates on the relevant region's ballot. Individuals have a continuing obligation to satisfy the firm-size requirement on the date the candidacy is certified by the Corporate Secretary and the date the ballots are mailed. Individuals who fail to meet this requirement will be disqualified from the election.

SFAB members must also continue to meet their qualifications for election at all times during their terms of office.

Voting Eligibility

FINRA small firms are eligible to vote for candidates running for the SFAB seat representing the region that corresponds to the district to which they are assigned in the Central Registration Depository®. Only those firms eligible to vote for the North Region and West Region seats will receive ballots.

The size of each firm and the location of each firm's main office will be verified on the day the ballots are mailed. Each firm will receive a ballot for the region in which it is eligible to vote. Firms may vote for only one candidate listed on the ballot.

Terms of SFAB Members

The successful candidate will be the individual who receives the most votes in his or her region. That candidate will be elected to serve a three-year term.⁴

The term of an SFAB member shall terminate immediately upon a determination by the SFAB, by a majority vote of the remaining members, that the member no longer satisfies the eligibility criteria. Additionally, the FINRA Board of Governors may remove from the SFAB a member who is unable or fails to discharge the member's duties or violates SFAB policies.

Once an individual has completed a full, three-year elected term on the SFAB, he or she is ineligible to run for reelection to the SFAB for another three years.⁵

Endnotes

- 1 A Small Firm is defined as a member firm that employs at least one and no more than 150 registered persons. See Article I (ww) of the FINRA By-Laws.
- 2 A Small Firm Governor is defined as a member of the FINRA Board of Governors elected by Small Firm members. In order to be eligible to serve, a Small Firm Governor must be registered with a member that is a Small Firm and must be an Industry Governor. See Article I (xx) of the FINRA By-Laws.
- 3 The SFAB candidate profile form is available online at www.finra.org/notices/election/090409 and as an attachment to this Notice.
- 4 In the previous election, the New York Region Representative was elected to a three-year term; the West and North Region Representatives were elected to two-year terms; and the Midwest and South Region Representatives were elected to one-year terms.
- 5 The composition of the SFAB was revised in 2008 and, in order to maintain continuity on the SFAB, three-year terms were phased in at that time. The individuals currently seated as the North Region and West Region SFAB Representatives were elected to two-year terms in 2008 and, therefore, are eligible for re-election.

ATTACHMENT - Candidate Profile Form

An electronic version of this candidate profile form also is available at www.finra.org/notices/election/090409.

Name: _____ CRD#: _____
(as you would like it to appear on official correspondence)

Current Registration

Firm Name _____ Firm #: _____

FINRA District No.: _____ Number of Registered Representatives at Firm: _____

Title/Primary Responsibility: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Prior Registration *(List the most recent first. Feel free to include extra pages if necessary.)*

Firm: _____

Title/Primary Responsibility: _____

Firm: _____

Title/Primary Responsibility: _____

General Areas of Expertise *(please check all that apply)*

- Compliance/Legal
- Corporate Finance
- Financial/Operational
- Institutional Sales
- Investment Advisory
- Retail Sales
- Trading/Market Making
- Other

Product Expertise *(please check all that apply)*

- Corporate Bonds
- Direct Participation Programs
- Equity Securities
- Investment Company
- Municipal/Government Securities
- Options
- Variable Contracts Securities
- Other

Memberships/Positions Held in Trade or Business Organizations

Election Notice

FINRA Notice of Contested Election and Ballots for Small Firm NAC Member Seat

Executive Summary

The purpose of this *Election Notice* is to notify small firms of a contested election for the open National Adjudicatory Council (NAC) Small Firm seat and to distribute to eligible FINRA small firms the ballots to vote for a Small Firm NAC Member. The vacant Mid-Sized Firm NAC Member seat was not contested.

Small firms are urged to vote in this election. In order for a ballot to be considered valid, it must be signed by the executive representative of the small firm eligible to vote in the election. Small firms that are members of FINRA as of the close of business on September 17, 2009, will be eligible to vote.

Ballots must be returned by October 19, 2009.

Note: This *Notice* was distributed electronically to the executive representative of each FINRA member firm and it is posted on FINRA's Web site at www.finra.org/notices/election/091809.

Questions regarding this *Election Notice* may be directed to:

- Marcia E. Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949; or
- Marc Menchel, Executive Vice President and Regulatory General Counsel, at (202) 728-8410.

September 18, 2009

Suggested Routing

- Executive Representatives
- Senior Management

Background

The NAC is appointed by the FINRA Board of Governors to review all disciplinary decisions issued by FINRA hearing panels and presides over disciplinary matters that have been appealed to or called for review by the NAC. The NAC also reviews statutory disqualification matters and considers appeals of membership proceedings and exemption requests.

Composition of the NAC

On November 6, 2008, the SEC approved a rule change to amend FINRA Regulation's By-Laws to restructure the industry representation on the NAC. Pursuant to these changes, the regionally based approach to appointing industry members to the NAC was replaced by a process that is based on firm size and is similar to the FINRA Board approach. Under the amended FINRA Regulation By-Laws, the seven industry members of the NAC shall include two Small Firm, one Mid-Size Firm, two Large Firm and two At-Large Industry NAC Members. The other members of the NAC are seven non-industry members, three of whom are public.

These changes to the composition of the NAC are being phased in over three years, as the terms of the existing industry members expire.

The Nominating and Governance Committee identifies candidates for all NAC seats, including the five industry member seats that are based on firm size.

Candidates for Small Firm NAC Member

In June 2009, FINRA's Nominating and Governance Committee nominated the following individual to fill the upcoming small firm vacancy on the NAC:

- ▶ **Thomas "Terry" Wallace** – President/CEO Johnston, Lemon & Co. Incorporated

One candidate successfully petitioned to have his name added to the ballot as an additional Small Firm NAC Member candidate:¹

- ▶ **Stephen A. Kohn** – President and CEO, Stephen A. Kohn & Associates, Ltd.

Profiles of each of the Small Firm NAC candidates are included in Attachment A.

Uncontested Nominee for Mid-Sized Firm NAC Member

The Nominating and Governance Committee also nominated John Muschalek, Managing Director of the Clearing Services Division of First Southwest Company as FINRA's nominee for the vacant Mid-Sized Firm NAC Member seat. The Mid-Size Firm seat was not successfully contested, and Mr. Muschalek will begin his term upon appointment by the FINRA Board.²

Mr. Muschalek's profile is included in Attachment B.

Term of Office

In general, each NAC member holds office for a term of three years. Terms of office commence and expire on a staggered, annual basis. The Small Firm NAC Member will be appointed to a three-year term beginning January 1, 2010. The Mid-Size Firm NAC Member will be appointed to complete the term of the NAC member who resigned, which is scheduled to end in December 2010.

Voting Eligibility

In the case of a contested election, firms are eligible to cast one vote for an industry candidate who is running for a seat that is in the same size category as their own firm. Therefore, only small firms may vote in this election for a Small Firm NAC Member candidate.

The size classification of each FINRA member firm will be verified on the day the ballots are mailed. All eligible small firms will receive a ballot containing the candidates for the vacant Small Firm NAC Member seat.

Firm Contact Information

Firms are reminded to accurately maintain their executive representative's name and email address, as well as their firm's main postal address in FINRA's records. This will ensure that important mailings, such as election information, will be properly directed. A firm's failure to keep this information accurate may jeopardize the firm's ability to participate in elections.

Pursuant to NASD Rule 1160, firms must update their contact information promptly, but in any event not later than 30 days following any change in such information, as well as review and, if necessary, update the information within 17 business days after the end of each calendar year. Additionally, firms must comply with any FINRA request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff.³

To update an executive representative's name and email address, firms may access the FINRA Contact System, located on FINRA's Web site at www.finra.org/fcs. To update postal address information, firms must file a Form BD Amendment via the Web CRD system. For assistance updating information via either of these systems, please contact the FINRA Call Center at (301) 590-6500.

Voting Methods

Small firms will be able to submit ballots by U.S. mail. The ballot sent to eligible small firms contains detailed instructions on the submission procedures.

As mentioned above, it is important that all eligible firms vote.

Endnotes

- 1 Pursuant to Section 6.2 of the FINRA Regulation By-Laws, a person who has not been nominated by the Nominating and Governance Committee may be included on a ballot if he or she is eligible to hold an open seat, and obtains the requisite number of petitions in support of his or her nomination from members entitled to vote (based on firm size classification) for such nominee's election.
- 2 Pursuant to Sec. 6.4 of the FINRA Regulation By-Laws, if the Nominating and Governance Committee proposes a candidate for nomination and no additional candidate successfully petitions pursuant to Section 6.2, the Nominating and Governance Committee shall nominate its candidate to the FINRA Board for appointment.
- 3 See NASD Rule 1160 and *Regulatory Notice 07-42 (September 2007)*.

Attachment A

Profiles of Candidates for Small Firm NAC Member Seat

Petition Candidate for Small Firm NAC Member Seat

Stephen A. Kohn
President and CEO
Stephen A. Kohn & Associates, Ltd.

Stephen Kohn is the President and CEO of Stephen A. Kohn & Associates, Ltd., a Colorado based, full service, and independent FINRA member firm founded in 1996. He came into the financial services industry in 1984 as a municipal bond salesman. Ultimately, he rose to become a branch manager of the largest OTC brokerage in the country. His experience has been with a number of small and large firms.

Mr. Kohn is a member of the Independent Broker-Dealer Association (IBDA). He is also a Member of the Securities Industry Professional Association (SIPA) and a FINRA Arbitrator.

Mr. Kohn graduated from C.W. Post College in 1964 with a Bachelor of Arts degree. He has served in the U.S. Coast Guard Reserve.

FINRA Nominee for Small Firm NAC Member Seat

Thomas “Terry” Wallace
President/CEO
Johnston Lemon & Co. Incorporated

Thomas T. Wallace is the President and CEO of Johnston, Lemon & Co. Incorporated, a Washington, DC-based, NYSE member firm founded in 1920. The early part of Mr. Wallace’s career was spent as a retail broker concentrating on clients within the Washington, DC, metropolitan area. He later progressed to Branch Office Manager then to Sales Manager and eventually President & CEO.

Mr. Wallace has served on many committees within the securities industry, for both FINRA, formerly known as NASD, and SIFMA, formerly known as SIA. Mr. Wallace served for four years on the FINRA Small Firm Advisory Board and three years on the FINRA District 9 Committee. He is currently serving on the FINRA District 9 Nominating Committee and maintains his status as a hearing officer for District 9. Mr. Wallace currently serves on the SIFMA Small Firms Advisory Board, and has done so for approximate 10 years.

Mr. Wallace graduated from the University of Maryland in 1967 with a bachelor of science degree in business administration. Upon graduation he immediately began active duty in the United States Army.

Attachment B

Profile of FINRA Nominee for Mid-Size Firm NAC Member Seat

FINRA Nominee for Mid-Sized Firm NAC Member

John Muschalek
Managing Director, Clearing Services Division
First Southwest Company

John Muschalek is Managing Director and head of First Southwest Company's Correspondent Clearing and Securities Lending divisions. He joined First Southwest Company in February 1992. He has also served as the firm's Chief Financial Officer and Financial and Operations Principal. Mr. Muschalek serves on the firm's Risk and Operations Management Committees. Before joining First Southwest Company, he served as the firm's auditor while working with the worldwide accounting firm KPMG Peat Marwick.

Mr. Muschalek represents the firm on numerous industry committees and civic boards. He is a member of the FINRA Financial Responsibility Committee (national committee) and completed a term (2003 – 2005, Chairman 2005) on the FINRA District Committee (District 6). Other FINRA Committees that Mr. Muschalek serves on include the Uniform Practice Code Committee, FINRA Consultative Committee and the District 6 Nominating Committee. Mr. Muschalek also serves on the Securities Industry and Financial Markets Association (SIFMA) Operations Red Group Roundtable (national committee – 2006 Chairman) and the SIFMA Clearing Firms Committee (Vice Chair 2009). He is also a frequent speaker at local and national industry conferences. Additionally, Mr. Muschalek has served five years on the Board of Directors and three years as the Vice Chairman of the Executive Committee of the Wilkinson Center, a Dallas-based charity.

Mr. Muschalek maintains FINRA Series 7, 24, 27 and 63 licenses. He is also a Certified Public Accountant and member of the American Institute of CPAs and the Texas Society of CPAs. He earned a bachelor of science degree in business administration, majoring in accounting, from Texas A&M University in 1988.